



**USE OF
HIGHWAY FUNDS BY OTHER STATE AGENCIES**

**From The Office Of State Auditor
Claire McCaskill**

**Report No. 2001-47
June 19, 2001
www.auditor.state.mo.us**

AUDIT REPORT



Office Of The
State Auditor Of Missouri
Claire McCaskill

June 2001

www.auditor.state.mo.us

The following conditions were reported related to an audit conducted by our office of the Use of Highway Funds by State Agencies other than the Missouri Department of Transportation.

For many years, the General Assembly has appropriated monies to various state agencies other than the Missouri Department of Transportation (MoDOT) to fund activities it considers highway-related. The expenditures total in excess of \$200 million annually. A narrow interpretation of the constitutional and statutory provisions governing the use of these monies would suggest that their use is limited to very specific purposes; however, it appears the legislature has taken a broader interpretation of the law when appropriating monies to these other state agencies.

At some of these other agencies, the auditors questioned whether some of the highway expenditures incurred met the legal criteria regarding their proper use and/or whether they were highway-related. The extent of such expenditures could not be fully determined without a more detailed study of the functions and activities being funded from highway appropriations. In addition, some agencies have not been required to adequately justify and support their level of highway funding.

The auditors found that the expenditures incurred from highway funds at the Department of Revenue, Office of Administration, and Department of Natural Resources met the legal criteria regarding the use of these funds and/or that the expenditures were highway-related.

The Governor and General Assembly should review the constitutional and statutory provisions governing the proper uses of highway funds and ensure any appropriations awarded to state agencies other than the MoDOT are set at an appropriate level. The applicable agencies should be required to justify and support their level of highway funding.

- In fiscal year 2000, the Missouri State Highway Patrol's (MSHP) expenditures from highway appropriations totaled over \$105 million. Of this amount, approximately \$65 million represented personal service costs, \$17 million represented employee fringe benefit costs, and \$23 million represented expense and equipment costs. In recent years, all personal service costs of the administration section (approximately \$3.3 million in fiscal year 2000) have been funded by highway appropriations, even though this section involves activities/functions affecting the entire organization.

In addition, the auditors noted that in April 2000, approximately 40 employees in the Patrol's Drug and Crime Control Division were paid from highway funds. It appears employees of this division do not generally work on highway activities. The auditors were informed that when monies have been depleted from state general revenue appropriations, personnel are paid from highway funds.

While it appears some expenditures paid from highway appropriations by the MSHP do not appear to meet the statutory and/or constitutional criteria cited and are not highway-related, it was not possible to quantify the extent of such expenditures without a more detailed study. Considering the extent of highway funding received by the MSHP, the amount of questioned, or non highway-related, expenditures could be substantial.

(over)

YELLOW SHEET

- In fiscal year 2000, the Division of Highway Safety's expenditures from highway funds totaled over \$392,000. Of this amount, approximately \$302,000 represented personal service costs and \$90,000 represented expense and equipment costs.

This division administers three federal highway-related programs involving enforcement, education, and engineering. The enforcement program primarily involves funding overtime and equipment costs for enforcement activities. The education program involves making the public aware of safety issues related to highway travel. The engineering program involves the purchase of safety signs for local governments in the state and paying for consulting firms to aid cities and counties with their road and bridge assessments. This program also pays the cost of an annual traffic conference which is held to inform public officials of current highway safety topics. Some of these activities may not be highway-related or meet the legal criteria regarding the use of highway funds.

- In fiscal year 2000, the Division of Motor Carrier and Railroad Safety's expenditures from highway appropriations totaled approximately \$2.5 million. Of this amount, approximately \$1.7 million represented personal service costs and \$800,000 represented expense and equipment costs. This division receives an appropriation from highway funds for either personal service and/or expense/equipment costs related to its regulatory duties over motor carriers.

Although the division's functions and activities that are funded from highway appropriations help ensure the proper oversight and safety of motor carriers, it appears some of the activities funded with these monies may not be highway-related or meet the specific criteria in state statute or the Missouri Constitution. These activities include those related to its oversight of the rates and fares of motor carriers and education assistance to new motor carriers.

- In fiscal year 2000, the State Auditor's Office (SAO) expenditures from highway appropriations totaled over \$628,000. Of this amount, approximately \$604,000 represented personal service costs and \$24,000 represented expense and equipment costs.

It appears the SAO's level of highway funding was originally established as early as 1947 based upon the ratio of highway funds to total state funds, and that funding has been increased incrementally by the legislature since that time. State law requires the SAO to audit the MoDOT and provides that the cost of the audit is to be paid from highway funds. Appropriations from highway funds have been used to fund audit work related to MoDOT, audits of highway funds expended by other state agencies and counties (pursuant to the federal off-system bridge replacement program), and audit work related to County Aid Road Trust (CART) monies received by counties. The costs incurred to audit CART monies may not meet a strict interpretation of the legal provisions; however, the General Assembly through the appropriation process, has expressed its intent that highway funds be used for this purpose.

Funding levels for audit work related to MoDOT and agencies funded by highway appropriations could vary considerably from year to year depending on the agencies audited or issues which might arise needing audit attention.

- In fiscal year 2000, the State Treasurer's Office expenditures from highway appropriations totaled over \$424,000, and were used to pay only personal service costs. It appears the State Treasurer's Office has received this highway funding because of its responsibilities related to the handling and investing of highway funds, and the amount has been increased incrementally by the legislature over the years. The State Treasurer's Office does not invest highway monies separately. Rather, these monies are pooled with other state funds for investment purposes. It appears the expenditures paid from highway appropriations significantly exceed the costs incurred to administer those funds.

USE OF
HIGHWAY FUNDS BY OTHER STATE AGENCIES

TABLE OF CONTENTS

	<u>Page</u>
STATE AUDITOR'S REPORT	1-3
EXECUTIVE SUMMARY.....	4-5
MANAGEMENT ADVISORY REPORT	6-19

STATE AUDITOR'S REPORT



CLAIRE C. McCASKILL
Missouri State Auditor

Honorable Bob Holden, Governor
and
Members of the General Assembly
and
Missouri Highway and Transportation Commission
Jefferson City, MO 65102

We have audited the use of highway funds by state agencies other than the Missouri Department of Transportation. The scope of the audit included, but was not necessarily limited to, policies, practices, and transactions for fiscal years 1999 and 2000. The objectives of this audit were to:

1. Determine the amount of monies expended by other state agencies from the State Highway Department Fund.
2. Determine if the monies expended by other state agencies were spent on highway-related activities and if those agencies could support their level of highway funding.
3. Review the related financial activity for compliance with applicable statutory and constitutional provisions.

Our audit was conducted in accordance with applicable generally accepted government auditing standards and included such procedures as we considered necessary in the circumstances. In this regard, we reviewed appropriations, expenditure and payroll records, relevant studies, and interviewed personnel at the various agencies.

As part of our audit, we assessed the state agencies' management controls to the extent we determined necessary to evaluate the specific matters described above and not to provide assurance on these controls. With respect to management controls, we obtained an understanding of the design of relevant policies and procedures and whether they have been placed in operation.

Our audit was limited to the specific matters described above and was based on selective tests and procedures considered appropriate in the circumstances. Had we performed additional procedures, other information might have come to our attention that would have been included in this report.

The accompanying Management Advisory Report presents our findings arising from our audit of the use of highway funds by other state agencies.

A handwritten signature in black ink, reading "Claire McCaskill". The signature is fluid and cursive, with the first name "Claire" written in a larger, more prominent script than the last name "McCaskill".

Claire McCaskill
State Auditor

February 22, 2001 (fieldwork completion date)

The following auditors participated in the preparation of this report:

Director of Audits:	Kenneth W. Kuster, CPA
Audit Manager:	Gregory A. Slinkard, CPA, CIA
In-Charge Auditor:	Toni Crabtree, CPA
Audit Staff:	Tara Shah, CPA
	Stacy Wright

EXECUTIVE SUMMARY

USE OF HIGHWAY FUNDS BY OTHER STATE AGENCIES EXECUTIVE SUMMARY

The General Assembly appropriates monies from the State Highway Department Fund (SHDF) to various state agencies other than the Missouri Department of Transportation (MoDOT) to fund activities which it apparently considers highway-related. The expenditures from these appropriations and related fringe benefit transfers total in excess of \$200 million annually.

Certain statutory and constitutional provisions limit the use of these highway funds. A narrow interpretation of these legal provisions would suggest that other than expenditures incurred directly by the MoDOT and the Missouri Highway and Transportation Commission, other costs to be incurred from these funds are limited to certain very specific purposes.

It appears the legislature has taken a broader interpretation of the law when appropriating monies from the SHDF to other state agencies. This has resulted in appropriations being granted to other state agencies that appear to fall outside these specific legal provisions. Although expenditures charged to these appropriations are for activities that are necessary for state government operations, some expenditures have been paid by these agencies that do not appear to be highway-related. The extent of expenditures incurred by these and other agencies which do not meet the statutory criteria or are not highway-related could not be fully determined because some agencies have not been required to adequately justify and support their level of highway funding.

The Governor and the General Assembly should review the applicable statutory and constitutional provisions which apply to the use of highway funds and make a determination of the proper uses of highways funds by state agencies other than MoDOT. After this determination is made, the Governor and General Assembly should ensure any highway appropriations awarded to those agencies are set at an appropriate level. It may ultimately be determined that the current level of highway funding to these other agencies should be reduced and the costs of these necessary operations be shifted to the state's General Revenue Fund or some other funding source.

MANAGEMENT ADVISORY REPORT

USE OF
HIGHWAY FUNDS BY OTHER STATE AGENCIES
MANAGEMENT ADVISORY REPORT

Expenditure of Highway Funds by Other State Agencies

For many years, the General Assembly has appropriated monies from the State Highway Department Fund (SHDF) to state agencies other than the Missouri Department of Transportation (MoDOT) to fund activities which it considered to be highway-related. In recent years, these appropriations were made to the Department of Public Safety, Department of Revenue, Department of Economic Development, Office of Administration, State Auditor's Office, State Treasurer's Office, and Department of Natural Resources. The amounts expended from these appropriations by these agencies and transfers for employee fringe benefits for the four years ended June 30, 2000, were as follows:

	Year Ended June 30,			
	2000	1999	1998	1997
Department of Public Safety	\$ 106,060,682	102,047,882	100,160,917	102,694,449
Department of Revenue *	87,274,632	84,332,223	93,020,010	88,850,107
Department of Economic Development	2,539,555	2,213,205	2,308,841	2,254,972
Office of Administration	325,282	1,967,445	1,057,261	1,027,686
State Auditor's Office	628,859	600,089	571,831	544,923
State Treasurer's Office	424,124	403,926	388,779	371,740
Department of Natural Resources	59,442	42,444	70	33,504
Employee fringe benefit transfers **	<u>13,684,499</u>	<u>12,257,849</u>	<u>11,464,462</u>	<u>11,883,709</u>
Total	\$ <u>210,997,075</u>	<u>203,865,063</u>	<u>208,972,171</u>	<u>207,661,090</u>

* The Department of Revenue amounts include motor fuel tax refunds totaling \$42,062,832, \$42,068,605, \$45,989,671, and \$38,540,872 in fiscal years 2000, 1999, 1998, and 1997, respectively.

** These amounts represent employee fringe benefit transfers made by the Office of Administration from the SHDF for the above agencies.

Legal Criteria Regarding the Use of Highway Funds

Revenues of the SHDF represent highway user fees, which include motor fuel taxes, driver license fees and permits, motor vehicle fees and permits, motor vehicle sales and use taxes and highway use taxes, and miscellaneous revenues, including interest income. Section 226.200, RSMo 2000, provides that state revenue derived from highway user fees be credited to the SHDF, and that fund pay or be credited the cost of:

- ❑ Collection of state revenue derived from the highway user fees;
- ❑ Maintaining the state highways and transportation commission;
- ❑ Maintaining the state transportation department;
- ❑ Any workers' compensation for state transportation department employees;
- ❑ The share of the state transportation department in any retirement program for employees; and
- ❑ Administering and enforcing any state motor vehicle laws or traffic regulations.

In addition, pursuant to Article IV, Section 30(b), of the Missouri Constitution, all state revenue derived from highway users less 1) the cost of collection; 2) the cost of maintaining the highway-related activities of the highways and transportation commission and department, including any workers' compensation and retirement programs; 3) the cost of administering and enforcing motor vehicle laws or traffic regulations, and 4) the refund of motor fuel taxes and that portion of motor fuel taxes allocated to local governments through the County Aid Road Trust (CART) Fund, shall be credited to the State Road Fund and be used for the construction and maintenance of state highways.

In practice, most highway user fees are credited to the SHDF. After payment of the department's administrative expenses, appropriations exercised by other state agencies, and the retention of a set amount to remain in the fund, the remaining monies in the SHDF are transferred to the State Road Fund on a monthly basis.

A narrow interpretation of the constitutional and statutory provisions cited above would suggest that other than expenditures incurred directly by MoDOT and the Missouri Highway and Transportation Commission, disbursements from the SHDF are limited to the costs related to the collection of highway user revenues, the costs of administering and enforcing state motor vehicle laws and regulations, and the refund of motor fuel taxes. However, it appears the legislature has historically taken a broader interpretation of the law when appropriating monies from the SHDF to other agencies. While it appears the intent of these appropriations was to provide funding for highway-related purposes, some of the expenditures made from these appropriations (although necessary costs of state government operations) were not for the specific purposes authorized in the applicable constitutional and statutory provisions regarding highway user fees. This situation is discussed further in the next section.

Use of Highway Funds by Other State Agencies

We reviewed the use of highway funds by the other state agencies and whether the expenditures were highway-related. We defined highway-related as providing necessary services or some other direct benefit to MoDOT or the Missouri Highway and Transportation Commission. We also considered whether the expenditures were for the specific purposes authorized in the applicable constitutional and statutory provisions. Our audit disclosed the following:

Department of Public Safety (DPS)

1. In fiscal year 2000, the Missouri State Highway Patrol's (MSHP) expenditures from highway appropriations totaled over \$105 million. Of this amount,

approximately \$65 million represented personal service costs, \$17 million represented employee fringe benefit costs, and \$23 million represented expense and equipment costs.

The MSHP receives highway appropriations for personal service and expense/equipment costs for its primary operating sections, including administration, enforcement, the academy, the crime lab, vehicle and driver safety, and technical services. Although it appears most activities of the MSHP are directly related to administering and enforcing motor vehicle laws or traffic regulations, the MSHP performs other functions unrelated to these activities, such as some drug and crime control activities, the governor's security, gaming activities, criminal records and identification activities, and some technical services. Although the MSHP makes an effort to match available funding to the appropriate activities, the MSHP has not performed a comprehensive, agency-wide study to ensure the personal service and expense/equipment costs for highway-related activities justifies the current level of appropriations from highway funds.

In recent years, all personal service costs of the administration section have been funded by highway appropriations and that section has not received any personal service appropriations other than from the SHDF. The administration section includes various divisions, including budget and procurement, human resources, research and development, construction and maintenance, and motor equipment. In fiscal year 2000, personal service costs of these divisions totaled approximately \$3.3 million. Since the administration section involves activities/functions affecting the entire organization, it does not appear proper for all personal service costs of this section to be paid entirely from highway funds.

In addition, according to MSHP personnel, employees of the Drug and Crime Control Division (within the enforcement section) do not generally work on highway-related activities and are not paid from highway funds. However, a review of the April 2000 payroll disclosed that approximately forty employees of this division were paid from highway appropriations. A review of the timesheets of several of these individuals indicated that none of the time recorded appeared to be related to administering and enforcing motor vehicle laws or traffic regulations. When we asked about this, we were informed that when monies have been depleted from available General Revenue Fund appropriations, personnel are paid from highway funds. It appears this is not an uncommon practice for other divisions of the MSHP also.

Except for possibly the Division of Vehicle and Driver Safety, all divisions appear to have functions which include both highway and non highway-related activities. In addition, we noted some purchases, including thirteen microcomputers and DNA proficiency tests for the crime lab; paper for enforcement operations (includes gaming, governor's security, and crime and drug control); and equipment for the department's mainframe were paid entirely from

highway appropriations; however, it appears that these supplies/equipment could be used by non highway-related personnel and/or for non highway-related activities. Also, the insurance for the MSHP's airplanes is paid from highway funds. It is unlikely that the use of the MSHP's airplanes is entirely related to administering and enforcing motor vehicle laws or traffic regulations.

It appears that most activities/functions of the MSHP that are funded from highway appropriations are highway-related and involve expenditures which meet the specific criteria in Section 226.200, RSMo 2000, and/or Article IV, Section 30(b), of the Missouri Constitution. However, it appears some costs which do not meet the statutory criteria and pertain to activities that are not highway-related are being funded from highway appropriations.

2. In fiscal year 2000, the Division of Highway Safety's expenditures from highway funds totaled over \$392,000. Of this amount, approximately \$302,000 represented personal service costs and \$90,000 represented expense and equipment costs. The highway appropriations for personal service and most of the expense/equipment costs are used as a match for federal funds. The expense and equipment appropriations included \$35,000 which the division spent for accident report forms provided through the MSHP to police and sheriff's departments pursuant to Section 43.251, RSMo 2000.

The Division of Highway Safety administers three federal highway-related programs involving enforcement, education, and engineering. The enforcement program primarily involves funding overtime and equipment costs for enforcement activities. The education program involves making the public aware of safety issues related to highway travel. The engineering program involves the purchase of safety signs (i.e. stop signs, yield signs, etc.) for local governments in the state and paying for consulting firms to aid cities and counties with their road and bridge assessments. This program also pays the cost of an annual traffic conference which is held to inform public officials of current highway safety topics.

Although the division's activities that are funded from highway appropriations help promote the safety of the motoring public, it appears some of the activities funded with these monies may not be highway-related and may not meet the specific criteria in Section 226.200, RSMo 2000, and/or Article IV, Section 30(b), of the Missouri Constitution.

While it appears some expenditures paid from highway appropriations by agencies within the DPS do not appear to meet the statutory and/or constitutional criteria cited and are not highway-related, it was not possible to quantify the extent of such expenditures without a more detailed study and comparison of the DPS's functions and activities and the funding levels from highway appropriations. Considering the extent of highway funding received by the DPS, the amount of questioned, or nonhighway-related, expenditures at this department could be substantial.

Department of Revenue

In fiscal year 2000, the Department of Revenue's (DOR) expenditures from highway appropriations totaled over \$45 million (not including motor fuel tax refunds). Of this amount, approximately \$24 million represented personal service costs and \$21 million represented expense and equipment costs. In that year, motor fuel tax refunds totaled about \$42 million. Many of the activities/functions of the department are directly related to the collection, allocation, and distribution of highway user revenues, including making motor fuel tax refunds, and involved various divisions of that department.

During our audit, we noted that the DOR has periodically reviewed its level of highway funding to ensure that level of funding is appropriate. In 1995, the department performed a comprehensive study to determine the appropriate level of funding between general revenue and highway funds, based on fiscal year 1996 activity. This study concluded the department was over-funded from highway funds by approximately \$2.2 million, and the department reduced its core budget requests from highway funds by that amount in fiscal year 1997. Since that initial study, the department has performed follow-up studies every two years. In those follow-up studies, the department has concluded that its level of highway funding is appropriate. We reviewed the initial study, follow-up studies, and current personal service and expense/equipment costs, and noted no problems with the department's rationale and methodology used in those studies or the manner in which the department justifies its appropriation levels from highway funds.

It appears the activities/functions of the DOR that are funded from highway appropriations are highway related and involve expenditures which meet the specific criteria in Section 226.200, RSMo 2000, and/or Article IV, Section 30(b), of the Missouri Constitution.

Department of Economic Development

In fiscal year 2000, the Division of Motor Carrier and Railroad Safety's expenditures from highway appropriations totaled approximately \$2.5 million. Of this amount, approximately \$1.7 million represented personal service costs and \$800,000 represented expense and equipment costs.

The Division of Motor Carrier and Railroad Safety is responsible for the general regulatory oversight of motor carriers, railroads, and light rail within Missouri, and receives an appropriation from highway funds for either personal service and/or expense/equipment costs related to its regulatory duties over motor carriers. The division also receives federal funds related to motor carrier safety and uses highway funds as a match. Funding related to the railroad safety activities comes from assessments to the railroad and light rail industries. The division collects motor carrier permit and other revenues which are deposited in the SHDF, and in fiscal year 2000, over \$3.2 million was deposited to the SHDF by the division.

Although the division's functions and activities that are funded from highway appropriations help ensure the proper oversight and safety of motor carriers, it appears some of the activities funded with these monies may not be highway-related or meet the specific criteria in Section 226.200, RSMo 2000, and/or Article IV, Section 30(b), of the Missouri Constitution. For example, the division's activities related to its oversight of the rates and fares of motor carriers, as well as the education assistance provided to new motor carriers may not be highway-related or meet the specific legal criteria cited. It was not possible to quantify the extent of questioned, or nonhighway-related, expenditures without a more detailed study and comparison of the division's functions and activities and the funding levels from highway appropriations.

Office of Administration

The Office of Administration (OA) handles employee fringe benefit transfers for all agencies. In fiscal year 2000, these transfers from the SHDF for agencies other than MoDOT totaled over \$13.6 million.

In addition to the fringe benefit transfers, the OA receives appropriations from highway funds to pay specific expenditures for other state agencies (including MoDOT). In fiscal year 2000, the OA expended approximately \$325,000 from highway appropriations to pay reimbursements to the Department of Labor and Industrial Relations, Division of Employment Security for unemployment claims related to former state employees paid from highway funds. The expenditures paid by the OA from highway funds for other state agencies were even higher in prior years and besides the cost of employment claims, involved the payment of real property leases and the payment for building design and construction costs. Funds to pay these costs were not appropriated to the OA in fiscal year 2000. In addition, the OA handles the transfers made from the SHDF to the State Legal Expense Fund for aircraft insurance and motor vehicle claims for the MSHP.

We reviewed several certifications to the OA from various agencies regarding unemployment benefits, and determined that the former employees were paid from highway funds. We also reviewed the lease costs paid prior to fiscal year 2000 and determined that the leases were for agencies receiving highway funds. In addition, we determined the transfer to the State Legal Expense Fund for the MSHP appears reasonable and proper, except for the allocation of all insurance costs for the patrol's aircraft to highway funds.

The payments made by the OA on behalf of the various state agencies receiving highway funds appeared appropriate based on the expenditures charged against SHDF appropriations by those agencies. To the extent those other agencies' expenditures from highway funds meet the specific criteria in Section 226.200, RSMo 2000, and/or Article IV, Section 30(b), of the Missouri Constitution and are highway-related, so are the expenditures and transfers the OA makes from the SHDF. If expenditures incurred from highway funds by other state agencies were to be reduced, the expenditures and transfers the OA made from highway funds would also be reduced accordingly.

State Auditor's Office

In fiscal year 2000, the State Auditor's Office (SAO) expenditures from highway appropriations totaled over \$628,000. Of this amount, approximately \$604,000 represented personal service costs and \$24,000 represented expense and equipment costs.

It appears the SAO's level of highway funding was established as early as 1947 based upon the ratio of highway funds to total state funds, and that funding has been increased incrementally by the legislature since that time. It should be noted that Section 29.210, RSMo 2000, requires the SAO to audit the MoDOT and provides that the cost of the audit is to be paid from highway funds. While that statute indicates the audit costs are to be paid from appropriations to MoDOT, in practice the legislature has historically granted the appropriations to pay these costs directly to the SAO. These appropriations have been used to fund audit work related to MoDOT, audits of highway funds expended by other state agencies and counties (pursuant to the federal off-system bridge replacement (BRO) program), and audit work related to County Aid Road Trust (CART) monies received by counties.

Based on past internal studies prepared by the SAO in 1984, 1987, and 1990, the amount of highway funds used to audit CART monies in counties has ranged from 46 to 60 percent of the total monies appropriated to the SAO from highway funds. This information has been shared with MoDOT and the legislature during the appropriation process. A recent study which reviewed the costs of audits conducted in the calendar year 2000 provided results similar to the past studies. Based on the recent study, we estimate that costs equal to approximately 50 percent of the highway appropriations were incurred by the SAO for audit work related to MoDOT, audits of highway funds expended by other state agencies, or audit work related to BRO Program monies spent in counties. We estimate the remaining 50 percent (approximately \$314,000) of the highway funds were used to perform audit work related to CART monies.

The costs of audit work related to MoDOT, highway funds expended by other state agencies, and BRO Program monies in counties appear to be highway-related. In addition, while these costs do not appear to meet the specific criteria in Section 226.200, RSMo 2000, or Article IV, Section 30(b), of the Missouri Constitution, Section 29.210, RSMo 2000, provides statutory authority for using highway funds in this manner. Even though the costs incurred to audit CART monies in counties may not meet a strict interpretation of the statutory and constitutional provisions cited, it appears the General Assembly, through the appropriation process, has expressed its intent that highway funds be used for this purpose.

It should be noted that funding levels for audit work related to MoDOT and agencies funded by highway appropriations could vary considerably from year to year depending on the agencies audited or issues which might arise needing audit attention.

State Treasurer's Office

In fiscal year 2000, the State Treasurer's Office (STO) expenditures from highway appropriations totaled over \$424,000, and were used to pay only personal service costs. It appears the STO has received this highway funding because of its responsibilities related to the handling and investing of highway funds, and the amount has been increased incrementally by the legislature over the years. The STO does not invest SHDF monies separately. Rather, these monies are pooled with other state funds for investment purposes.

The STO's practice has been to spend monies from its highway appropriations without attempting to match salaries and other costs with the specific activities/functions. To support its appropriations, in fiscal years 1999 and 2000 the STO prepared a schedule estimating a management fee, representing what it would cost if the highway funds were managed by an external party. While this fee schedule and methodology approximates the STO expenditures from highway funds, it appears expenditures paid from highway funds should be based on costs incurred by the STO related to the handling and investing of highway funds.

In fiscal year 2000, approximately 23 percent of the total personal service costs of the STO (approximately \$1.8 million) were paid from highway funds. In contrast, at June 30, 2000, only about 5 percent of all monies in the custody of the STO represented highway funds. Accordingly, it appears the expenditures paid from highway appropriations significantly exceed the costs incurred by the STO to administer those funds.

Although some of the activities/functions that are funded from the highway appropriations appear to be highway-related, those activities/functions do not appear to meet the specific criteria in Section 226.200, RSMo 2000, and/or in Article IV, Section 30(b), of the Missouri Constitution. Therefore, it may not be appropriate for any of the costs of the State Treasurer's Office (STO) to be paid from highway funds. At a minimum, it appears approximately \$334,000 annually in costs paid by the STO from highway funds may not be highway-related (based on fiscal year 2000 expenditures and the June 30, 2000, balances of funds in the custody of that office) and should be funded by the state's General Revenue Fund. However, it should be noted that the STO will be responsible for the handling and investment of proceeds from bonds issued by the MoDOT recently and in the future. These bond monies will likely increase the level of highway funds in the custody of the STO and, therefore, may justify a higher level of highway funding being provided to that agency than indicated above.

Department of Natural Resources

In fiscal year 2000, the Department of Natural Resources' (DNR) expenditures from highway appropriations totaled approximately \$59,000. Of this amount, approximately \$57,000 represented personal service costs and \$2,000 represented expense and equipment costs. The DNR receives appropriations from the SHDF for personal service

and expense/equipment costs. The expenditures from these appropriations relate to an agreement, whereby the DNR performs environmental analyses for the MoDOT. These expenditures represent reimbursements for costs incurred by DNR in performing this work.

The department maintains timesheets and prepares quarterly reports supporting these expenditures. During our review of these records, we noted no problems in accounting for personal service and expense/equipment costs incurred from highway funds.

The appropriations to the DNR from highway funds appear reasonable and proper. The costs are for work performed by the DNR for the MoDOT, and DNR maintains adequate documentation to support its use of highway funds.

Conclusion and Recommendation

Based on our audit, it appears some state agencies have expended highway funds for purposes that do not meet the applicable legal provisions and/or do not appear to be highway-related. The extent of these expenditures could not be fully determined because some agencies have not been required to adequately justify and support their level of highway funding.

The Governor and the General Assembly should review the provisions of Section 226.200, RSMo 2000, and Article IV, Section 30(b), of the Missouri Constitution and make a determination of the proper uses of highway funds by state agencies other than MoDOT. After this determination is made, the Governor and the General Assembly should ensure any appropriations awarded to those agencies from the SHDF are set at an appropriate level.

To accomplish this, it may be necessary for detailed base reviews of the applicable agencies' budgets be conducted pursuant to Sections 33.800 to 33.810, RSMo 2000. Such a review is required with a majority concurrence of the Chairman of the House Budget Committee, the Chairman of the Senate Appropriations Committee, and the Director of the Division of Budget and Planning. The team assigned to perform a detailed base review is to begin the review no sooner than the final approval of the appropriation bills by the Governor and complete the review no later than October 1 of the same year. As part of this process, consideration should be given to requiring the applicable state agencies to justify and support their level of funding from the SHDF.

The Governor and General Assembly may ultimately determine that the current level of highway funding to the various other agencies should be reduced. If funding levels to the agencies from highway funds are reduced, the funding for these necessary functions and activities will have to be shifted to the state's General Revenue Fund or some other funding source.

It should be noted that legislation passed in the 2000 legislative session will limit the monies appropriated from the SHDF to other state agencies in the future. Section 226.200.3, RSMo 2000, provides that in future years the total amount of appropriations from the SHDF for other state agencies will not exceed the total amount appropriated for those agencies for fiscal year 2001.

AGENCY RESPONSES:

Missouri State Highway Patrol

The criticism concerning alleged improper use of transportation moneys is misplaced. Article IV, Section 30(b) of the Missouri Constitution states that the costs of administering and enforcing any state motor vehicle laws or traffic regulations shall be paid from revenue derived from highway users. The Constitution, and also the statutes, fail to give additional guidance as to what the terms “administering” or “enforcing” mean in the context regarding appropriate uses of funds. Likewise, there is an absence of caselaw on the subject. A sole Missouri Attorney General’s Opinion from 1976 states that highway funds cannot be used when conducting criminal investigations. However, even this opinion, which was issued in letter form, apparently does not take into account the fact that there may be investigations based on violations of traffic laws or regulations committed on the highways of this state. Arguably, investigations such as leaving the scene of a motor vehicle accident where an innocent motorist is killed could come under the funding mandate espoused in the Constitution. Due to the enormity of the Patrol’s mission, the enforcement and administration of the state’s traffic laws and regulations often overlaps with other missions of the Patrol that at first glance would not necessarily seem to have a clear-cut nexus with traffic enforcement. To argue or attempt to create a bright line standard where there is no legally clear set of guidelines or criteria for the Patrol to follow, necessarily entails the use of subjective interpretations that could differ among reasonable persons. The impracticality is compounded when those persons lack a general understanding of the Patrol’s intertwining missions. The Patrol, in the past, has sought, and been granted highway funds necessary to carry out missions and functions now being questioned, including costs regarding the administration of motor vehicle and traffic laws. Some of the Patrol’s funding was first sought through general revenue, however, later appropriated out of highway funds by the legislature.

Specifically, the report had four major findings, to which we have responded below:

- *The Patrol has not performed a comprehensive agency-wide study to ensure it is using highway money properly.*

While the Patrol has never performed a “comprehensive agency-wide study,” it has always done its best to ensure that all funding is properly spent. Budget Division personnel routinely check with the divisions that receive a variety of personal service funding, to determine which of their employees’ salaries would best be paid from highway funds vs. which would best be paid from other funds. Budget Division personnel also work in conjunction with the divisions that receive a variety of expense and equipment funding, to ensure that invoices are properly coded and charged against the most appropriate available funding. Likewise, the Patrol has always done its best to properly request funding of new decision items through the state’s budget process. However, even though we may initially request an item to be funded from general revenue, for instance, that does not prevent that funding from being switched to highway by Budget and Planning or at some other stage of the appropriation process. Each division of the Patrol has an operating budget, developed

internally, with its funding determined by the functions of the division and the appropriations by the state legislature.

- *The entire payroll for the administration program is paid from highway funds, even though the administration program involves functions that affect the entire organization.*

The Patrol agrees with the auditors' observation that our administration program involves activities and functions that affect the entire organization, not just those that are highway-related. However, personal service appropriations for this program have always been provided solely through highway funds by the state legislature, and as noted above, mission overlap does not always allow clear-cut distinctions to be made.

- *In April 2000, 40 employees in Drug and Crime were paid from highway funds, even though they did not work on highway related activities.*

While the majority of the Patrol's enforcement program is highway-related, there are certain areas that would probably be better suited for other funding (i.e., Drug and Crime Control, Criminal Records, and Governor's Security). Traditionally, however, we have never received adequate funding from other sources, such as general revenue, to entirely pay the personal service costs of these areas. As a result, we pay as much of their salaries as possible from the other funding sources that we have been provided, but may need to use highway funding as well to be able to pay them for the entire year. And while it is true that a lot of the work of our Drug and Crime Control Division is not necessarily highway-related, these employees do spend a significant amount of time engaged in support work for the enforcement of highway laws and could therefore legitimately be paid from highway funds.

- *There were some expense and equipment purchases (computers and DNA tests for the Crime Lab, paper for the Gaming Division/Governor's Security/Drug and Crime Control, mainframe equipment for the Information Systems Division, and insurance for the Patrol's airplane) that were paid from highway funds, even though it appears they would have been used for non-highway functions.*

As explained above in relation to our administration program, some of the Patrol's funding, such as the money appropriated for our supply warehouse, is provided solely through highway funds by the state legislature. The same applies to computer mainframe equipment; since its use supports road enforcement officers, the money has been appropriated through highway funds.

Division of Motor Carrier and Railroad Safety

The audit report states that "educational assistance provided to new motor carriers may not be highway-related or meet the specific legal criteria cited." The Missouri Constitution Article IV, Section 30(b) and Section 226.200 RSMo both state that the Highway Fund shall be used for "administering and enforcing any state motor vehicle laws or traffic regulations." The education assistance program is one component of the Division's enforcement section. The information provided to motor carriers is the "administering" of knowledge to assist carriers to

comply with state and federal motor carrier regulations. Helping a motor carrier comply with the law is an effective and efficient method of “enforcement”. The Division of Motor Carrier and Railroad Safety uses education as the first component of the safety enforcement program. Other components include vehicle and carrier inspections, case investigations, and prosecution of violations.

State Auditor's Office

Although the audit work related to the MoDOT and agencies funded by highway appropriations could vary considerably from year to year, the SAO intends to reduce its expenditures of Highway Funds by 10% for FY 2001. Recognizing that CART funds are subject to statutory interpretation, the SAO will support legislation to reduce or eliminate a portion of highway funding related to CART audits with a corresponding replacement of those funds by general revenue.

The SAO will reduce expenditures of Highway Funds by 10% each year for the next 5 years if the General Assembly appropriates general revenue funds to replace the Highway Funds.

State Treasurer's Office

The STO agrees with the audit findings and supports the implication of the audit report: The use of monies from the Highway Fund by the STO should be scaled back, if not completely phased out. However, the STO would be unable to perform its Constitutional and statutory responsibilities if the monies from the Highway Fund were eliminated from the STO's personal service budget without a funding replacement.

Since 1985, the STO has received nearly 25 percent of its total personal service appropriation from the Highway Fund. At that time, the justification for the STO to receive monies from the Highway Fund was to cover the cost of performing the banking and investment operations for the Highway Department (now MoDOT). The justification created a unique situation since no other state agency has this agreement with the STO.

During years of very tight budgets, Highway Fund monies were used to supplement declining state revenues. Although revenues grew and Missouri experienced a very healthy economy during most of the 1990s, the practice of appropriating Highway Funds for use by other agencies was never changed.

The STO has a history of proposing plans to phase out the use of monies from the Highway Fund in its personal service appropriation. In 1995, the STO formally proposed to the Committee on Legislative Research, Oversight Division, to phase out the use of Highway Fund monies in the STO's appropriation. One of the most popular plans would have phased out monies from the Highway Fund and replaced the funds with General Revenue over five years. None of the proposals were ever successfully passed through the General Assembly.

The STO continues in its desire to work with the Governor and members of the General Assembly to phase out the use of monies from the Highway Fund.

Other Agencies

The information in this report was also shared with the Division of Highway Safety, Department of Revenue, Office of Administration, and Department of Natural Resources. Those agencies did not provide a response to the report.

This report is intended for the information of the Governor and General Assembly and other applicable government officials. However, this report is a matter of public record and its distribution is not limited.

* * * * *